

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
NEW YUEN FAT GARMENTS FACTORY LIMITED,	:	
	:	
Plaintiff,	:	Case No. 07 CIV 8304
	:	
- against -	:	
	:	
AUGUST SILK, INC. and DIRECT APPAREL	:	ANSWER AND
SOURCING, INC.,	:	ALTERNATIVE
	:	<u>COUNTERCLAIMS</u>
	:	
Defendants.	:	
-----	X	

August Silk, Inc. ("Defendant") by its attorneys Lazarus & Lazarus, P.C.,
answering the Complaint of Plaintiff, New Yuen Fat Garments Factory Limited
("Plaintiff") respectfully sets forth, represents and alleges:

1. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in the paragraph of the Complaint marked and numbered 1,
and specifically avers that, upon information and belief, Plaintiff is not authorized to do
business in New York, or, alternatively Plaintiff is a domestic business corporation.

2. Admits the allegations of Paragraph 2 of the Complaint.

3. Denies each and every allegation set forth in the paragraph of the
Complaint marked and numbered 3.

4. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations set forth in the paragraph of the Complaint marked and numbered 4,
except specifically avers that, Defendant is not liable to Plaintiff for any claim or cause
asserted in the Complaint.

5. Denies each and every allegation set forth in the paragraph of the
Complaint marked and numbered 5.

6. Defendant admits so much of the allegations of the paragraph 6 of the Complaint as alleges that Defendant conducts business in this forum, and deny knowledge or information as to the remainder thereof.

7. Pleads to each and every allegation set forth in the paragraph of the Complaint marked and numbered 7 by referring to the laws, rules and statutes referenced therein, except admits that Defendant does business within this District.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 8, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 9, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 10, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 11, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 12,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 13, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 14, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 15, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 16, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 17, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 18,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 19, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 20, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 21, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 22, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 23, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 24,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 25, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 26, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 27, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 28, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 29, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 30,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 31, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 32, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 33, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 34, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 35, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 36,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 37, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 38, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 39, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 40, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 41, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 42,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 43, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 44, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 45, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 46, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 47, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 48,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 49, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 50, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 51, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 52, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 53, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 54,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 55, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 56, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

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58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 58, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 59, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 60,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

61. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 61.

62. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 62.

63. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 63.

64. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 64.

65. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 65.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 66, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

67. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 67, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

68. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 68.

69. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 69.

70. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 70.

71. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 71.

72. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 72.

73. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 73.

74. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 74, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

75. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 75, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 76, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

77. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 77.

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79. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 79.

80. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 80.

81. 81. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 81.

82. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 82.

83. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 83, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

84. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 84, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

85. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 85, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

86. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 86.

87. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 87.

88. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 88.

89. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 89.

90. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 90.

91. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 91.

92. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 92, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

93. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 93, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

94. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 94, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

95. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 95.

96. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 96.

97. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 97, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

98. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 98.

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100. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 100.

101. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 101.

102. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 102.

103. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 103.

104. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 104.

105. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 105.

106. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 106.

107. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 107.

108. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 108.

109. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 109.

110. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 110, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

111. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 111.

112. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 112.

113. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 113.

114. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 114.

115. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 115.

116. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 116, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

117. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 117.

118. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 118.

119. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 119, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

120. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 120, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

121. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 110, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

122. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 110, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

123. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 123.

124. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 124, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

125. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 125, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

126. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 126, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

127. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 127, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

128. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 128, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

129. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 129.

130. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 130, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

131. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 131,

except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

132. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 132, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

133. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 133, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

134. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 134, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

135. Denies each and every allegation set forth in the paragraph of the Complaint marked and numbered 135.

136. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 136, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

137. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 137, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

138. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 138, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

139. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 139, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

140. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 140, except specifically denies that Defendant is liable to Plaintiff for any claim or cause asserted in the Complaint.

As and For a First Affirmative Defense

141. Upon information and belief this Court lacks subject matter over the claims causes of actions asserted by Plaintiff herein.

As and for A Second Affirmative Defense

142. There is a prior action pending between the Plaintiff and Defendant herein.

As and for a Third Affirmative Defense

143. Plaintiff's claims against Defendant are barred by the doctrine of waiver.

As and for a Fourth Affirmative Defense

144. Plaintiff's claims against Defendant are barred by the doctrine of laches.

As and for a Fifth Affirmative Defense

145. Plaintiff's claims against Defendant are barred by the doctrine of estoppel.

As and for a Sixth Affirmative Defense

146. Plaintiff's Claims are barred by the Statute of frauds.

As and for a Seventh Affirmative Defense

147. Plaintiff has failed to state a claim for relief.

As and for an Eighth Affirmative Defense

148. Plaintiff's claims are barred by documentary evidence.

As and for a Ninth Affirmative Defense

149. Plaintiff's claims are barred by the statute of limitations

**Facts Applicable to Each
Alternative Affirmative Defense
And First Alternative Counterclaim
Assuming this Court's Jurisdiction**

150. Defendant repeats and realleges each and every prior allegation hereof as if set forth at length herein.

151. Defendant is a corporation organized and existing under and by virtue of the laws of the State of Delaware with a place of business in New York at 499 Seventh Avenue, Six South Tower, New York, New York 10018.

152. Upon information and belief Plaintiff is a corporation doing business in New York.

153. Defendant is a merchant engaged in business as a seller of apparel to retailers.

154. Upon information and belief Plaintiff is a merchant engaged in business as a manufacturer of apparel.

155. Prior to in or about November 2003, Defendant entered into various agreements in writing for the purchase and sale of apparel with Direct Apparel Sourcing, Inc. ("DAS") wherein and whereby DAS agreed to sell and deliver, and Defendant agreed

to take in, accept, and pay for apparel merchandise upon the specifications, terms and conditions as more particularly set forth in, without limitation, Cut Tickets/Purchase Orders ("PO" or the "POs") known and numbered as PO 4352, PO 4351, PO 4355, PO 4354, PO 4359, PO 4357, PO 4356, PO 4350, PO 4404, PO 4402, PO 4400, PO 4401, and PO 4403.

156. In connection with the POs, Defendant as applicant caused to be opened to DAS various Letters of Credit, including without limitation, JPMorgan Chase L/C Nos. A795459, A795335, A794591, A794616, A794613.

157. Upon information and belief, upon issuance by Defendant of the POs to DAS, and upon opening of the Letters of Credit by Defendant to DAS, DAS issued corresponding orders to Plaintiff and opened separate Letters of Credit to Plaintiff or transferred an interest in Defendant's Letters of Credit to Plaintiff.

158. Defendant at no time issued POs to Plaintiff herein.

159. Defendant at no time opened Letters of Credit to Plaintiff.

160. Defendant at no time was in contractual privity with Plaintiff, including, without limitation, with respect to the matters subject of the Complaint.

161. If notwithstanding the lack of privity by and between Defendant and Plaintiff herein, Plaintiff has standing to proceed against Defendant herein, than as alternative affirmative defenses and counterclaims, Defendant has standing to assert the alternative defenses and alternative counterclaims against Plaintiff.

**As and for an Alternative Tenth Affirmative Defense
And Second Alternative Counterclaim**

162. Defendant repeats and realleges each and every prior allegation hereof as if set forth at length herein.

163. Plaintiff knew or should have known that with respect to POs issued to it by DAS that DAS's purchaser with respect thereto was Defendant herein.

164. Plaintiff by reason of such knowledge was obligated and bound to deliver the apparel subject of the POs to Defendant in accordance with the specifications, terms and conditions set forth in the PO's.

165. At the time Plaintiff agreed to manufacture, sell and deliver the apparel, subject of the POs, Plaintiff knew or should have known that Defendant intended to resell the apparel subject of the POs to its retail customers at a substantial profit and had in fact entered into contracts for such resale at a profit.

166. Upon information and belief, Plaintiff was paid for substantially all of the apparel subject of the POs by Plaintiff's receipt, directly or indirectly, of moneys paid to DAS through Defendant's Letters of Credit.

167. Plaintiff breached its obligations to Defendant herein in that contrary to Plaintiff's obligations as set forth in the POs Plaintiff caused to be delivered to Defendant apparel that was (a) not as ordered; and (b) not as specified; (c) late; (d) unmerchantable; and (e) unsuited for the purposes intended.

168. By reason of the aforesaid, Defendant was not able to deliver the apparel subject of the POs to Defendant's customers.

169. By reason of Plaintiff's breach as aforesaid, Defendant is entitled to an award of consequential damages, including lost profits, in an amount to be proved at trial.

170. By reason of Plaintiff's breach as aforesaid, Defendant is entitled to an award of incidental damages.

171. By reason of the aforesaid, Defendant is entitled to recoup all moneys received by Plaintiff directly or indirectly from Defendant's Letters of Credit.

172. By reason of the aforesaid, Defendant has been damaged in an amount as of yet unknown, to be proven at trial, in excess of \$5,000,000.00, but in any event substantially in excess of any moneys due Plaintiff from Defendant herein, and Defendant should have judgment therefore.

**As and for an Alternative Eleventh Affirmative Defense
And Third Alternative Counterclaim**

173. Defendant repeats and realleges each and every prior allegation hereof as if set forth at length herein.

174. By reason of the aforesaid breaches of its agreements to sell and deliver apparel in accordance with the PO's, Plaintiff breached its warranties, express and implied, and obligations owing to Defendant.

175. By reason of the aforesaid, Defendant has been damaged in an amount not less than \$5,000,000.00 and Defendant should have judgment therefore.

WHEREFORE DEFENDANT AUGUST SILK, INC., respectfully demands judgment (i) dismissing the Verified Complaint of Plaintiff, Nikita, Inc.; (ii) on granting the relief requested in each of its Counterclaims; and (iii) for such other and further relief as this Court deems just and proper.

Respectfully submitted this 30th day of October, 2007.

LAZARUS & LAZARUS, P.C.

By: 

Harlan M. Lazarus (HML 0268)
Attorneys for Defendant
August Silk, Inc.
240 Madison Avenue
New York, New York 10016
(212) 889-7400

To: **YUEN ROCCANOVA SELTZER & SVERD LLP**
132 Nassau Street
Suite 1300
New York, New York 10038
ATTN: **PETER E. SVERD, ESQ.**

YUEN & YUEN, ESQS.
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Suite 1300
New York, New York 10038